96 does in my opinion make a collection of 26 people who agree together each to deposit $5 bi-monthly and who agree to decide by lot that each of them shall have the total amount subscribed in turn an unlawful society under that Enactment.

Accordingly its managers and members are liable to prosecution under the the criminal law for not being registered or recorded. Nevertheless the objects of a society and the contracts between its members may well give rise to civil rights and obligations enforceable between the members and/or the officers even though the society is forbidden by law or its managers or members liable to criminal prosecution for being in existence without the publicity demanded by law. I can find no unlawful object or purpose in this Kutu, as disclosed by the evidence. At any time the manager can be called upon to account to the member whose turn it is to take the $125 or if called upon to account to the twenty-five as to what he had done with their $125 could discharge himself by showing he had paid the member whose turn it was to take the loan—*Greenberg v. Cooperstein*[1]. And I fail to understand why one who lends the manager money in order to meet such a liability has no right to be repaid.

I therefore hold that the consideration for the promissory note was a lawful consideration.

The onus was on the defendant to establish his allegations. He has failed and judgment must be given for the plaintiff for the principal sum, for interest at 12 per cent. to date of hearing, and costs on scale proper to this suit in first class Magistrate's Court.

Judgment for plaintiff.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J. (F.M.S.), TERRELL, Ag. C.J. (S.S.) & GORDON-SMITH, Ag. J.A.

August 23, 1940.

CHIN WAH v. PUBLIC PROSECUTOR.

[PERAK CRIMINAL REFERENCE No. 2 of 1940]

Penal Code (Cap. 45) Sec. 406—Breach of trust —what constitutes.

The complainant lent the gold necklace, the subject matter of the charge, to the appellant in order that the latter's wife might wear it at a party. The necklace was not returned to the complainant, although she frequently asked for its return, and eventually appellant admitted that he had pawned it.

Held, that as the essence of the offence of the criminal breach of trust is the "dishonest" misappropriation or conversion by a person of property entrusted to him the appellant was rightly convicted. **Gan Beng v. Public Prosecutor**[1] approved. **Ng Chye Giat v. Rex,**[2] dissented from.

Cases referred to:—

(1) *Gan Beng v. Public Prosecutor,* 8 M.L.J. 314.

(2) *Ng Chye Giat v. Rex,* 7 M.L.J. 126.

(3) *Ragubir Kurmi,* 1 U.P.L.R. p. 69.

CRIMINAL REFERENCE.

Appellant in person.

T.V.A. Brodie for the Public Prosecutor.

Cur. Ad. Vult.

(Poyser C.J., (F.M.S.), Terrell Ag. C.J., (S.S.) Gordon-Smith Ag. J.A.)—Acting under the provisions of section 53 of the Courts Enactment (Cap. 2), Howes J. referred this appeal to the Court of Appeal. His reasons for so doing were that in his opinion the appeal raised an important point of law in regard to which there were conflicting decisions, *viz*: whether a person can be convicted of criminal breach of trust, when a chattel the subject matter of the charge, has been obtained by the accused person as a gratuitous loan. At the conclusion of the hearing we dismissed the appeal, but stated that we would give our reasons for so doing in a written judgment.

The material facts, as found by the Magistrate, are as follows. The complainant lent the gold necklace, the subject of the charge, to the accused, in order that the latter's wife might wear it at a party. The necklace was not returned to the complainant, although she frequently asked for its return, and eventually the accused admitted that he had pawned it.

Howes J. was of the opinion that the transaction between the parties was of a purely civil nature, and that the criminal law should never have been invoked. In this connection he referred to one of his own decisions viz: *Ng Chye Giat v. Rex,*[2] in which he held that:—

> "A loan of jewellery to another does not create any legal trust within the meaning of section 405 of the Penal Code; even if a promise to return the same within a stated time is given. The mere pawning of the jewellery by the person to whom it is lent will not, therefore, amount to criminal breach of trust as defined in that section".

Murray Aynsley J. in the case of *Gan Beng v. P. P.*[1] dissented from this decision, and held that the wording of section 405 was wide enough to include bailment, and that when a person borrowed a bicycle and misappropriated it, he was rightly convicted under this section.

The above are the conflicting decisions Howes J. referred to. We agree with the principles enunciated by Murray Aynsley J. and considered that the accused

was rightly convicted. The essence of the offence of criminal breach of trust is the 'dishonest' misappro priation or conversion by a person of property entrusted to him. The fact that in this case the entrusting of the property was gratuitous is, in our view, immaterial; the point is, did the accused dishonestly convert to his own use the property of which he was the bailee? The evidence accepted by the Magistrate proved beyond all doubt that he did, and we fail to see, therefore, that the complainant's only remedy is a civil action.

I think it is only necessary to refer to one authority in support of this proposition viz: *Regubir Kurmi,*[3] in which it was held that:—

> "Where the accused asked for a gold mohur from the complainant in order that he might play with a child that was weeping, using the mohur as a play thing, and subsequently misappropriated it, he was guilty of criminal breach of trust".

For the above reasons we dismissed the appeal.

Appeal dismissed.

[REVISIONAL CIVIL JURISDICTION]

CUSSEN, J.

November 6, 1940.

HALIMAH binti LATIFF

(Plaintiff)

v.

HAJI MOHAMED DIN bin HAJI ABDULLAH

(Defendant).

[COURT OF A JUDGE—REFERENCE BY MAGISTRATE]

[SELANGOR CIVIL APPLICATION No. 27 of 1939]

Land Code (Cap. 138) sections 42 (iii), 95—Indefeasibility of Title—Memorandum of Transfer signed by another in the name of Transferee—Transferee a minor—No question of fraud—Infringement of section 95 Land Code—Meaning of "void" in section 42 (iii) Land Code.

In 1936 the proprietor of E.M.R. 6054 Ulu Langat executed a memorandum of transfer in favour of plaintiff (then a minor) and defendant, as co-proprietors. The memorandum was executed in plaintiff's name by another person.

Defendant drew the coupons for the land (which was planted with rubber) and refused to give plaintiff her share. Plaintiff (now of age) sued defendant for damages for conversion of her share of the coupons. At the hearing it was contested for defendant that by section 42 of the Land Code the registration of plaintiff as co-proprietor was void and therefore plaintiff was not the proprietor of the land.

Held, that the plaintiff, being the person entered on the Register was "for the time being" the proprietor of the land.

REFERENCE UNDER SECTION 571 OF THE CIVIL PROCEDURE CODE.

Plaintiff in person.

G. W. de Silva for Defendant.

M. C. Hay, Deputy Commissioner of Lands, as *amicus curiae.*

Cussen, J.—This is a reference on a question of Law under Section 571 of the Civil Procedure Code from the Magistrate, Ulu Langat.

The question and the relevant facts are as follows:—

The Plaintiff (Halimah binti Latiff) and the Defendant (Haji Mohd. Din bin Haji Abdullah) are registered as the proprietors of the land in E.M.R. 6054, Mukim Ulu Langat. They came on the Register on 9th October, 1936 by a transfer from the then Registered Proprietor one Haji Isa.

At that date Halimah was a minor (she is now of age) and the Memorandum of Transfer was signed as Transferee not by Halimah but by her mother Bedah who signed as Halimah.

There was no question of any dishonesty or fraud; but the provisions of the Land Code were infringed—which forbids land to be registered in the name of a minor. The proper course would have been for Bedah to have taken the transfer to herself as "Trustee."

Bedah also, apart from the matter of the minority of Halimah, had no authority (no Power of Attorney) to sign for Halimah.

It is evident therefore that the Memorandum of Transfer was at any rate an insufficient if not a void instrument within the meaning of Section 42 (iii) of the Land Code which is as follows:—

> "42. (iii). If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void."

The question for decision then is: In view of the provisions of Section 42 (iii) is Halimah a Proprietor (i.e. co-proprietor) of this land?

"Proprietor" is defined in Section 2 of the Land Code as "the individual person . . . . *for the time being* registered as the owner of land comprised in a . . . . entry in the Mukin Register."

This must depend upon the construction of Section 42 (iii) and the meaning and force to be given to the word "void" therein.

I have heard the Parties to this Civil Suit (Mr. De Silva for the Defendant) and I have had the assistance of the Deputy Legal Adviser (Lands) (Mr. Hay) as *amicus curiae.*